Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundling of Local Exchange Carrier	)	RM - _____
Common Line Facilities	)	

PETITION FOR RULEMAKING

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SUMMARY

MFS hereby petitions the FCC to adopt rules promptly requiring the Tier 1 LECs (except NECA pool members) to provide the common line element of interstate switched access service (that is, the "local loop") on an unbundled basis, at cost-based rates, to state-certified competing providers of such service. This proposal is a natural extension of the Commission's decisions in CC Docket No. 91-141 to require that other bottleneck elements of the LEC network—special access circuits and trunkside connections to switched access—be made available for interconnection on an unbundled basis. Because several States have acted to authorize competition in the provision of switched local exchange service (which was not the case when the current expanded interconnection rules were framed), the time is now ripe to extend similar interconnection and unbundling requirements to the bottleneck facilities that connect interexchange carriers ("IXCs") and end users to the first point of switching in the local exchange network. This rulemaking will enable companies that have been authorized by individual state commissions to provide basic local dialtone services to obtain unbundled access to these quintessential bottleneck facilities for use in originating and terminating interstate traffic, and thereby extend the multiple, well-recognized benefits of competition to interstate switched access users and tens of millions of end users without requiring costly and inefficient duplication of loop facilities.

The local loop, or common line, is the dedicated transmission path between a demarcation point at the end user's premises and the LEC's central office. Given their historical status as regulated monopolies, the LECs have constructed virtually ubiquitous loop networks that provide access to every interexchange carrier and virtually all residential and business premises in the Nation. In building these networks, the LECs had the singular advantages of

favorable governmental franchises, access to rights-of-way (including, in many areas, the power to condemn private property), unique tax treatment and protection against competition. Companies such as MFS that now seek to compete in the provision of local exchange service do not share these advantages, and it would be both infeasible and economically inefficient in most cases for them to seek to construct duplicate loop facilities. Replication of the existing LEC loop network (using either facilities similar to the LECs' or alternative technologies such as wireless loops or cable television plant) would be cost-prohibitive; moreover, competitors cannot obtain public and private rights-of-way or franchises on the same terms as incumbent LECs enjoy.

There are no technical obstacles to loop unbundling, although it is necessary for the Commission to adopt uniform technical standards to facilitate interconnection to unbundled loops. The loop historically consisted of a dedicated pair of copper wires for each subscriber line, but in recent years many loops have been provided using "pair gain" systems that can multiplex many transmission circuits onto a smaller number of physical transmission facilities. MFS is providing a technical analysis with this Petition to demonstrate that unbundling is feasible regardless of whether the local loop is provided by dedicated copper wires or by one of the several pair gain technologies currently in use. Competitors can interconnect to the unbundled loops at the LEC central office using the same expanded interconnection arrangements already in place for special access and switched transport circuits.

The Commission has already determined in CC Docket No. 91-141 that competition in the interstate switched access market will benefit the public and promote the goals of the Communications Act. However, the inability of prospective entrants to purchase unbundled and

cost-based access to the local loop is currently interfering with the development of competition in this market. LECs have consistently refused to provide such access to competitors on terms comparable to those on which they allow end users the use of local loops. In most jurisdictions, the LECs have simply refused to unbundle loops and instead have required competitors to purchase bundled private line (or special access) services to reach customer premises. Private lines provide a transmission function similar to the local loop, but they are bundled with additional functions and services—including special circuit engineering and conditioning, which competitors neither want nor need—that not only increase competitors' costs but also delay the provisioning of circuits. Moreover, even if a LEC did agree to unbundle loops, competitors could not, as a practical matter, make use of such unbundled loops unless they were priced on a rational and cost-determined basis. If a LEC were permitted to set unbundled loop prices *higher* than the rates it charges its end users for bundled local exchange service, which *includes* the use of the loop, it could create an intolerable price squeeze that would effectively prevent competitors from using these facilities. Both the bundling (or tying) of private line services and the creation of price squeezes are contrary to the public policy exemplified by the antitrust laws and are antithetical to this Commission's well-established policies of promoting local exchange competition and enhanced access for IXCs.

MFS believes that the Commission is uniquely situated to address this nationwide policy issue notwithstanding the fact that the pricing of local exchange service and of the intrastate portion of the local loop are under the jurisdiction of the state commissions, not the FCC. The FCC clearly does exercise jurisdiction over the interstate portion of loop costs, and in addition can regulate those aspects of the common loop facility that are incapable of being separated

between federal and state jurisdictions (such as technical standards and means of interconnection). Accordingly, to complement the pro-competitive initiatives undertaken by state legislatures and regulatory commissions, the Commission should adopt rules requiring each Tier 1 LEC (except NECA pool members) (1) to make available unbundled loops in any study area in which the state commission has authorized local exchange competition, (2) to permit interconnection to such loops via tariffed expanded interconnection arrangements consistent with those already in place for special and switched access, (3) to comply with uniform minimum technical criteria so that both incumbents and new entrants can be assured of compatibility between their respective networks, and (4) to prohibit LECs from charging more for the interstate component of unbundled loops than they charge end users for the same service (*i.e.*, the End User Common Line Charge).

In addition, without infringing upon the prerogatives of the state commissions, the FCC can and should exert its national leadership by adopting non-binding guidelines for the pricing of unbundled loops in relation to the pricing of local exchange service, in order to discourage price squeezes and to promote effective competition. MFS proposes that those LECs that comply with the guidelines, with the approval of their state regulatory commissions, would become eligible for enhanced pricing flexibility for their interstate access services. These pricing guidelines should require that the rate/cost ratio of an unbundled loop (that is, the ratio of the combined interstate and intrastate rates for an unbundled loop to the Total Service Long Run Incremental Cost of the loop facility) may not exceed the rate/cost ratio for basic local exchange service (that is, the ratio of the monthly recurring charge for basic local service, including the EUCL, to the Total Service Long Run Incremental Cost of that service). The

proposed guidelines are designed to fit within the parameters of local regulatory schemes by allowing the States considerable flexibility with respect to geographic price averaging or deaveraging and other local pricing issues.

Adoption of these measures -- clearly within the purview and experience of the Commission -- will perpetuate the Commission's leadership role in encouraging the development of local competition, carrier choice for both residential and business customers and increased competition in the provision of interexchange access services. The creation of additional competitive opportunities for new entrants will provide the impetus for a further expansion of private investment in the telecommunications infrastructure and the deployment of state-of-the-art technologies that will enable the delivery of innovative applications and enhanced services, resulting in further economic growth and consumer benefits.

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PETITION FOR RULEMAKING

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby petitions the Federal Communications Commission, pursuant to 47 C.F.R. § 1.401, promptly to establish rules requiring Tier 1 local exchange carriers ("LECs") to unbundle, and provide expanded interconnection to, the common line element of interstate switched access service (that is, the "local loop") for use by competing state-authorized providers of local exchange service.

This Petition will demonstrate that cost-based access to unbundled local loop facilities is critical if competitive providers of local telephone service are to be able to offer service on a cost-effective basis to all interexchange access carriers ("IXCs") and business and residential subscribers, and thereby to ensure that the multiple benefits of local exchange competition are made widely available to the public. Because several leading States have authorized local exchange competition within the past year, and others are expected to take such action in the near future, it is now critical that this Commission promptly exercise its jurisdiction over the interstate component of the local loop for two purposes—first, to assure that interstate regulation of the loop will not serve as an impediment to State-authorized local exchange competition and expanded access for IXCs, but instead will facilitate and encourage such competition; and, second, to prescribe basic, uniform standards for those aspects of the local loop that are

incapable of being separated on a jurisdictional basis, such as technical parameters for unbundled loops and the method of interconnection to such facilities.

This Petition is a natural outgrowth of the pioneering pro-competitive policies adopted by the Commission in its *Expanded Interconnection* rulemaking, CC Docket No. 91-141, which was initiated by a petition filed by MFS in November 1989. After extensive review, the Commission concluded in that proceeding that expanded interconnection is in the public interest and required the LECs to unbundle, and provide direct interconnection to, both special access circuits and "trunkside" connections to tandem and end office switches.[1] The Commission's current expanded interconnection rules thus permit competitive providers of special access (dedicated, non-switched transmission circuits) and of switched transport (circuits connecting third parties to the trunk side of a LEC switch) to obtain access to the LEC's bottleneck facilities on a reasonable and efficient basis. Interconnection to and unbundling of the local loop is, for all practical purposes, the third leg of the stool and will similarly further the public interest. The current limitation of switched access interconnection to trunkside connections prevents competitive local exchange carriers from obtaining direct access to loop facilities except in bundled form.[2] By this Petition, MFS asks the Commission to extend similar forms of

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[1] *Expanded Interconnection With Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992), *modified as to other issues*, 8 FCC Rcd 127 (1992), *further modified*, FCC 93-379 (released Sept. 2, 1993), *vacated in part on other grounds sub nom. Bell Atlantic Telephone Companies v. F.C.C.*, 24 F. 3rd 1441 (D.C. Cir. 1994).

[2] A "trunkside" connection allows a competitive switched access carrier to connect its transport facilities to a LEC switch. The LEC switch in turn provides dial tone to the end user and performs all local switching functions. Under this arrangement, the carrier must pay the LEC for at least three elements of access charges (the carrier common line, local switching, and transport interconnection charges) in order to originate or terminate traffic from or to an end user; thus, the common line is effectively "bundled" with these other elements and functions.

interconnection to all competitive providers of local exchange service that have been authorized by State regulators, enabling them to interconnect with unbundled loop facilities without having to pass through a LEC switch, and without having to purchase other switched access service elements on a bundled basis.

I. INTRODUCTION AND STATEMENT OF FACTS

A. Interest of Petitioner

MFS is a leading nationwide and international provider of integrated telecommunications services, including local access, to business customers. MFS operates digital fiber optic telecommunications networks in over three dozen metropolitan areas in the United States, providing a full range of dedicated special access and private line transmission services; and offers digital communications services in several major European markets. MFS is also a leader in data communications—it was the first carrier to offer nationwide Asynchronous Transfer Mode (ATM) data communications services and the first to provide trans-Atlantic ATM circuits. In addition, MFS' Intelenet subsidiary has been certificated by State regulators to provide local exchange service in the States of Illinois, Maryland, New York, and Washington (and to resell local service in Massachusetts), and has applications for similar authority pending in Michigan, New Jersey, Ohio, Oregon, Pennsylvania, and Texas.[3] Other leading jurisdictions, such as

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[3] *MFS Intelenet of Illinois, Inc.*, Docket No. 93-0409 (Ill. Commerce Comm'n, July 20, 1994); *In the Matter of the Application of MFS Intelenet of Maryland, Inc.*, 152 PUR 4th 102 (MD PSC 1994); *Petition of MFS Intelenet of New York, Inc.*, Case No. 92-C-0803 (NY PSC, March 17, 1993); *MFS Intelenet of Washington, Inc.*, Docket UT-940670 (Wash. Util. & Trans. Comm'n, June 22, 1994); *MFS Intelenet of Massachusetts, Inc.*, DPU No. 93-211 (MA DPU, March 9, 1994); *MFS Intelenet of Michigan, Inc.*, MI PSC Docket No. U-10721; *MFS Intelenet of New Jersey, Inc.*, NJ BPU Docket No.
(continued...)

California, Arizona and Connecticut, are also establishing conditions necessary for local competition to develop. MFS Intelenet currently provides local exchange service in New York City, and anticipates commencing such service in the near future in Rochester, New York; Chicago, Illinois; Baltimore, Maryland; and the Maryland suburbs of Washington, D.C. MFS therefore has an immediate and substantial need for access to unbundled LEC loop facilities at reasonable prices.

B. Description and Definition of "Unbundled Loops"

The subject matter of this Petition is access to and interconnection to "unbundled loops." An "unbundled loop" in regulatory terms is the common line element of interstate switched access service, which has been defined by the Commission as a "line between the premises of an end user and a Class 5 office [of a LEC] that is or may be used for local exchange service transmissions." 47 C.F.R. § 69.104(a). In engineering terms, the common line is typically a voice-grade analog transmission path between the LEC central office and the demarcation point at the customer's premises; this transmission path historically and most commonly has been provided through the use of a dedicated pair of copper wires for each line, although in recent years, a number of other loop technologies have been deployed by the LECs. (The newer technologies are often referred to as "pair gain" techniques because they permit more than one loop to be provided per pair of copper wire.)

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[3](...continued)
TT 95010031; *MFS Intelenet of Ohio, Inc.,* OH PUC Docket No. 94-2019-TC-ACE; *MFS Intelenet of Oregon, Inc.,* OR PUC Docket No. CP-14; *MFS Intelenet of Pennsylvania, Inc.*, PA PUC Docket No. A-310203F0002; *MFS Intelenet of Texas, Inc.,* TX PUC Docket No. 13282.

In this Petition, MFS requests that the loop (or common line) be unbundled from other elements of LEC services—it is *not* requesting that the loop itself be unbundled into subelements or smaller components. Although the Commission may wish to consider in the future further disaggregation of the loop into subelements, MFS believes that such an undertaking would be far more complex and time-consuming than the relatively straightforward loop unbundling sought by this Petition, and that the more limited relief sought by this Petition will meet the most immediate needs of competitive providers of switched access and thereby provide substantial and rapid benefits to the public similar to those that the Commission's pro-competitive expanded interconnection policies have already provided.

Thus, the relief sought by MFS is the ability to interconnect at a LEC central office to transmission facilities that provide voice-grade transmission paths to customers' premises within the service area of that central office. As discussed further in Section IV of this Petition, the provision of such unbundled loops is not dependent upon the type of loop facilities employed by a particular LEC, and there is no technical obstacle to the requested unbundling. If a LEC relies upon dedicated copper pairs to serve its local exchange customers, it can provide identical copper pairs to interconnectors. If, however, a LEC uses pair gain systems such as Digital Loop Carrier systems, it can similarly provide interconnectors with transmission capacity on these systems instead of dedicated pairs. The actual interconnection to the unbundled loop facilities can be provided in precisely the same manner as existing special access and switched transport expanded interconnection arrangements. All that is required is a cross-connection between the LEC's loop transmission facilities and the interconnector's physically or virtually collocated

transmission facilities, which is essentially identical to the cross-connections already available under the LEC expanded interconnection tariffs.

C. Availability of Unbundled Loops is Essential to Enable Full Competition in Local Exchange and Interexchange Access Service

It is beyond dispute that in order to provide local telephone service, a carrier must have some means of linking its network to its customer's premises. In each locality, there is an incumbent LEC that has unique possession of such a link in the form of the local loop. While some LECs have contended that their local loops do not constitute a bottleneck, citing alternative means of accomplishing the same result, such as (1) cellular radio or PCS, (2) cable, (3) the possibility that a new entrant could build its own network, or (4) use of private line or special access,[4] such contentions are, for the present and the foreseeable future, demonstrably false. The local loop is and will remain the quintessential telecommunications bottleneck facility.

1. Neither Cellular Radio Nor PCS Is A Feasible Alternative to the Local Loop

Cellular radio is not an economically or technically feasible substitute for the local loop. It is a supplemental technology catering almost exclusively to mobile subscribers, not a replacement for the wireline network. Existing cellular systems simply do not have the channel capacity to substitute for fixed location local exchange service. To compensate for the lack of channel capacity multiple cells would be required to serve even a medium-sized business. A connection point to the carrier's network could not even be as far away as across the street. As a result, to serve such businesses, the carrier might as well build its own wireline network.

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[4] *See* Section I.D, below.

Although PCS may have the capacity to serve more subscribers than traditional cellular systems, it will not be deployed in the near future. Commercial PCS licenses have yet to be awarded. It will take years for PCS to become widespread, and even then, some areas will not be served by PCS.

Both cellular radio and PCS are inferior to wireline networks in terms of security and reliability. There are also spectrum scarcity considerations with respect to both cellular radio and PCS. Given the limited availability of radio spectrum, the Commission has reserved new allocations for use by emerging technologies, primarily in the mobile services.[5] Utilization of this spectrum to create ubiquitous networks that would essentially duplicate the wireline networks would not be an efficient use of spectrum and would further limit the available spectrum for emerging technologies.

2. A Cable Overlay Is Not a Feasible Alternative to the Local Loop

A cable television network overlay is also not an economically feasible route around the local loop bottleneck for several reasons. Traditional cable networks are unidirectional and multipoint. Even though a telephony overlay would be able to share the same conduit, it is likely that a separate telephone wire to the customer premises would still have to be installed and the estimated cost to a cable operator to build a local exchange access line is approximately double the cost to an incumbent LEC.[6] Cable television systems do not have the switching

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[5] *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies,* 7 FCC Rcd 1542 (1992).

[6] In the U.K., it is practical for new entrants into the cable market to enter telephony at the same time, because they can construct both networks at the same time using the same conduits. In the U.S., by contrast, except for the very limited areas in which cable has not already been laid, the economies of scope involved in installing cable and telephone at the same time are unavailable.

capabilities and interoffice transmission facilities necessary to provide telephone service and these would have to be added at substantial cost. In addition, cable typically does not pass business centers, and a large minority of residential telephone users are not connected to a cable network. A cable overlay also involves serious technical challenges. As a result of these considerations, although many cable companies have given consideration to entering telephony, activity has been limited.

3. New Construction Is Not a Feasible Alternative to the Local Loop

Because adding a telephone network to a cable network is economically infeasible, building a telephone network from the ground up is a fortiori economically infeasible. A carrier seeking to provide ubiquitous service on such a basis would not even be able to take advantage of the limited economies of scope available in the case of a cable overlay. In addition to construction costs, such a new entrant would face huge obstacles by way of permitting, franchising, rights-of-way, and building access impediments, most of which are not imposed upon the incumbent LEC.[7] Surmounting the far more limited obstacles of this nature was economically feasible for the incumbent LECs only because they long ago entered the market on a basis in which they were granted a monopoly position and were provided with an essentially guaranteed rate of return. Absent such a guarantee, constructing a ubiquitous network under prevailing conditions would plainly be unimaginable and, in any event, decades away.

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[7] Such obstacles include franchise and encroachment fees, gross revenue fees, exorbitant pole attachment fees, a burdensome permitting process for pole attachments and building access, "access rents" charged by building owners, denial of access to the building's inside wire, and burdensome procedures for accessing a building's cable and riser closets. For a more detailed description of these impediments and comparisons with the impediments faced by an incumbent LEC, see Appendix 1.

D. Unbundled Loops are Technically and Functionally Distinct from Dedicated Circuits

At first glance, an unbundled loop that provides a dedicated transmission path between a LEC end office and a customer's premises may appear little different from special access voice-grade channels, or from private line local channels offered by many LECs under state tariffs.[8] Indeed, in some state proceedings, LECs have argued that there is no need for "loop unbundling" because existing private line tariffs provide all the functionality that competitors need.[9] There are, however, a variety of functional, operational and technical differences between private lines and unbundled loops which make it necessary for the Commission to adopt rules dealing specifically with the latter. In addition, LECs themselves generally do not treat private lines as substitutes for unbundled loops.

The functional difference between an unbundled loop and a private line is that the former is used to provide switched local exchange service, while the latter is generally not (although a special access circuit may be used to connect an end user to a switched long distance service). This distinction has important regulatory consequences. In particular, the costs of private line circuits are directly assigned to either the interstate or state jurisdiction based upon whether or not the interstate traffic on the circuit exceeds ten percent of the total traffic on the line; while 25 percent of common line plant costs are assigned to the interstate jurisdiction and the

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[8] In the interest of clarity, references in this petition to "private line" services include special access services as well. MFS will refer specifically to "special access" service only where there is a relevant regulatory distinction between the two types of dedicated service.

[9] *See e.g., In the matter of the application of CITY SIGNAL, Inc. for an order establishing and approving interconnection arrangements with Michigan Bell Telephone Company,* Case No. U-10647, Opinion and Order at 38, 58 (MI PSC, February 23, 1995) (rejecting Ameritech Michigan's argument that dedicated private lines are an acceptable substitute for unbundled loops).

remainder to the state jurisdiction (except where a study area qualifies for an additional interstate assignment as a "high cost" area). 47 C.F.R. § 36.154(a)-(c). As a result, the rate applicable to a private line service is determined solely by one tariff, either interstate or state depending on the nature of the traffic on the line; while the costs of common lines are recovered out of two different tariffs, namely the interstate access tariff (through the common line elements) and the state tariffs.[10] The only two LECs that have to date offered unbundled loops (New York Telephone and Rochester Telephone) have both taken the position that common lines remain subject to the 25 percent allocation rule when provided on an unbundled basis, and both of them have filed petitions with this Commission for waivers of Part 69 to permit them to collect interstate common line charges on these loops.[11]

Even apart from the regulator-mandated difference in pricing between private lines and common lines, there are significant differences in how the two types of lines are provisioned and maintained that make private lines an unacceptable substitute for unbundled loops. First, the installation intervals for private lines are much too lengthy to be practical. Although most LECs can provide switched exchange service (including a common line) to end users within 5-7 business days, private line installation intervals typically are about three times as long.[12] The

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[10] The state portion of common line costs is generally recovered through exchange service charges, but in some jurisdictions some of these costs may also be recovered through carrier common line charges or other rates.

[11] *In the matter of NYNEX Telephone Companies Petition for Waivers of Part 69 of the Commission's rules to Provide Unbundled Common Lines,* DA94-1136; *In the Matter of Rochester Telephone Corp. Petition for Waivers to Implement its Open Market Plan,* DA93-687.

[12] This may result from the fact that installation of a private line entails a disconnect and new installation rather than a cross-connect at the central office, as would be the case with an unbundled loop.

additional delay severely handicaps a new entrant in competing for end user customers, since the new entrant would have to quote an installation interval that includes the time required for the LEC to install a private line.

Second, because private lines provide their purchasers with unwanted and unneeded features, such as greater performance levels, they are far more costly. LECs often impose charges on private line users for line testing and monitoring functions which, in the case of switched services, are performed automatically by switching equipment. For example, in a recent Iowa Utilities Board hearing concerning local exchange competition, a US WEST official testified that

> [a private line "network access channel"] also includes the ability to access the link for automated, remote testing, and the provision of "channel performance," to ensure a particular level of transmission quality. The testing and channel performance functions are typically performed by the central office switch when ports and links are combined into a residential or business exchange service. These functions must still be performed by US WEST if a "link" is used as a part of a private line service.

McLeod Telemanagement, Inc., Docket No. TCU-94-4, Testimony of Jeffrey Owens, Hearing Transcript at 971 (Dec. 15, 1994). But, if a similar transmission facility were used as part of a competitor's switched exchange service, the competitor's central office switch would be capable of performing the testing and channel performance functions (just as US WEST's switch does with respect to its switched services), and there would be no need to pay US WEST for performing redundant functions.

In effect, a private line is another form of bundling of the loop. Whereas the purchaser of a bundled local loop is required to purchase the use of the LEC switch (whether wanted or not), the purchaser of a private line is required to purchase unwanted line conditioning and

monitoring functions. The result is the same: an economically infeasible alternative to an unbundled loop.

II. UNBUNDLING OF THE LOCAL LOOP IS IN THE PUBLIC INTEREST

A. Unbundling of the Local Loop Will Promote Competition in the IXC Access and Local Exchange Markets and Bring Substantial Economic Benefits to Business and Residential Users

Incumbent LECs continue to exert unrestrained monopoly control over the local loop -- the "last mile" of the telecommunications network -- and provide the means by which interexchange and competitive local exchange carriers obtain virtually all of their access to customers. As a result, service between most telephone customers and the LECs' central offices remains, for all intents and purposes, the exclusive province of the incumbent LECs. A major factor contributing to the feasibility of local exchange competition, however, is the potential new service applications made possible by network software. With access to unbundled loops, competitive local exchange carriers can use this software in their networks and compete effectively to fulfill user demands for new applications without having their own physically separate set of transmission facilities to every location they serve.

Unbundled loops are necessary to provide competitive local exchange carriers access to the essential bottleneck distribution facilities controlled by the monopoly local exchange carriers. The availability of unbundled loops will allow competitive carriers to directly reach end users who are currently accessible, as a practical matter, only through the LEC bottleneck and to utilize a facility having the same technical specifications as the facilities used by incumbent LECs to provide plain old telephone service ("POTS"), thereby expanding the choices available

to IXCs and business and residential end users in terms of both service and providers. Competitive local carriers will be able to use unbundled loops in combination with their ports and transport facilities to provide an end user service that is at least functionally equivalent to the local exchange service that incumbent LECs provide to their own customers.

There is a clear consensus by both state and federal authorities that unbundling of the local loop component of the incumbent LECs' networks is critical to the development of effective competition. The more pro-active consumer-oriented State regulatory bodies that have addressed the unbundling issue have uniformly concluded that unbundling is in the public interest for this reason.

For example, the New York Public Service Commission has found that the unbundling of local loops is in the best interest of consumers because it would allow competitive carriers to expand the market for their services, increase the utility of competitive networks and offer all local exchange customers an alternative to the monopoly local service provider. *Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links,* 152 PUR 4th 193, 194 (NY PSC 1994). Similarly, the Illinois and Michigan Commissions have determined that unbundling of the local loop is necessary to remove a significant barrier to competition. The Michigan Public Service Commission has found that "unbundled loops are vital to local exchange competition and in the public interest" and are necessary to allow a competitive local exchange carrier to provide service to every customer within its exchange areas. *In the matter of the application of CITY SIGNAL, INC. for an order establishing and approving interconnection arrangements with Michigan Bell Telephone Company,* Case No. U-10647, Opinion and Order at 56, 57 (MI PSC, February 23, 1995). In

a Proposed Order issued January 24, 1995, two Illinois Commerce Commission Hearing Examiners concluded that "unbundling LEC networks is essential to permit the development of local exchange competition and is in the public interest." *See Illinois Bell Telephone Company, Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois,* Docket Nos. 94-0096, *et al.*, at 49 (Ill. Commerce Comm'n, Hearing Examiners' Proposed Order, January 24, 1995).[13] The Maryland Public Service Commission has approved the "idea of unbundling links" to promote local exchange competition and is conducting further proceedings to resolve implementation and pricing issues. *Re MFS Intelenet of Maryland, Inc.*, 152 PUR 4th 102, 117 (MD PSC 1994).[14] On the federal level, the Antitrust Division of the Department of Justice has taken the position that unbundling of the local loop is absolutely necessary in order to provide competitive opportunities in the local exchange market. In testimony before the House Telecommunications and Finance Subcommittee last year, Anne K. Bingaman, Assistant Attorney General for Antitrust, U.S. Department of Justice, advocated local loop unbundling, stating that "Such unbundling is a critical precondition for establishing truly effective competition in the local telephone market."[15] More recently, she reiterated the Department's view that

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[13] Pursuant to another Proposed Order, the Illinois Commerce Commission is considering adoption of rules requiring Tier 1 LECs to offer local loops on an unbundled basis. *Adoption of Rules on Line-side Interconnection and Reciprocal Interconnection,* Docket No. 94-0049 (Ill. Commerce Comm'n, Hearing Examiner's Proposed Interim Order, January 24, 1995).

[14] California, Massachusetts and Pennsylvania are also addressing local loop unbundling issues in ongoing proceedings.

[15] *National Communications Competition And Information Infrastructure Act: Hearings on H.R. 3636 and H.R. 3626 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce,* 103rd Cong., 2d Sess. 140 (1994) (Statement of Anne K. Bingaman, Assistant Attorney General, Antitrust Division, U.S. Department of Justice).

unbundling "on terms that make competition in local markets feasible for those not in a position to duplicate the RBOC's local networks" is necessary for the emergence of local competition.[16]

The Commission has repeatedly recognized that competition generates improved telecommunications services and creates substantial benefits for telecommunications users, in terms of expanded service choices, lower prices, better technology and more efficient and responsive LEC performance. In adopting the expanded interconnection rules, the Commission described the advantages of a competitive marketplace as follows:

> Competition in the interexchange and CPE markets has brought consumers increased service options, reduced rates, and faster implementation of technologies. . . .
>
> We believe that increased competition will produce similar results in the interstate special access market. The growth in competition, resulting from expanded interconnection should increase LEC incentives for efficiency and encourage LECs to deploy new technologies facilitating innovative service offerings. It should also make the LECs more responsive to customers in providing existing services. Moreover, we believe that in many areas of the country, expanded interconnection will increase the choices available to access customers who value redundancy and route diversity. . . . In addition, increased competition will tend to reduce prices for services available from both the LECs and alternative suppliers.

Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd at 7378, 7380.

The growth in competition in the local exchange market that will be made possible by the availability of unbundled loops should yield similar benefits. Unbundling will ensure that new entrants are not forced to build duplicate ubiquitous networks or incur costs or incorporate functions of local exchange components that they do not need. This will allow new local

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[16] *See* "Promoting Competition in Telecommunications," Address by Anne K. Bingaman, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Before the National Press Club, Washington, D.C. February 28, 1995, at 13.

exchange carriers to offer their services at prices competitive with those of the incumbent LECs and should ultimately lead to reduced rates for business and residential customers. The existence of competition is likely to create incentives for the incumbent LECs to improve the efficiency and quality of their operations, to explore the use of new technologies, and to be more responsive to both their end user and interstate access customers in providing local service. Most importantly, this development of competition will mean that business and residential customers finally will have a choice of local service providers just as they have a choice of long distance and CPE providers.

The competitive opportunities that unbundling will create for new entrants will encourage additional private investment in the telecommunications infrastructure, which is essential to maintaining a first-class communications system. A competitive environment will spur the deployment of state-of-the-art technologies that will enable the delivery of innovative applications and enhanced services, and thereby contribute to the further development of the "information super highway." Every segment of society will reap the benefits of an advanced telecommunications infrastructure. As the National Telecommunications and Information Administration stated in its report, "Telecommunications in the Age of Information":

> U.S. businesses can harness telecommunications to operate more efficiently, better serve their customers and compete more efficiently in a global economy. Telecommunications can help deliver critical services such as education and health care more cheaply, more extensively, and more equitably. Millions of Americans with disabilities can use telecommunications to gain access to economic and social opportunities that many of their fellow citizens take for granted.

B. LEC Refusals to Unbundle Loops are Anti-Competitive and Contrary to the Interests of Consumers

The refusal to unbundle the loop from the other elements of local exchange services that prevails in the vast majority of states precludes potential competitors such as MFS from combining the LEC's loop with their own switching port to furnish local exchange service and thus deprives business and residential customers of the economic benefits of price competition, enhanced service offerings and enhanced customer service in the local exchange market. In carrying out its public policy responsibilities, the Commission must be guided by the antitrust laws' condemnation of this type of business practice as a per se unlawful "tie-in." *See United States v. F.C.C.*, 652 F.2d 72, 88 (D.C. Cir. 1980) (en banc) ("we have insisted that the agencies consider antitrust policy as an important part of their public interest calculus"); *Petition of American Tel. & Tel. Co.*, 67 FCC 2d 1455, 1477 (1978) (FCC "consider[s] the basic policies of the antitrust laws in the context of 'public interest' determinations"); *see also F.C.C. v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 795 (1978) (Commission is "permitted to take antitrust policies into account in making licensing decisions pursuant to the public interest standard"); *United States v. Radio Corp. of America*, 358 U.S. 334, 351 (1959) ("in a given case . . . antitrust considerations alone" might be determinative); *National Broadcasting Co. v. United States*, 319 U.S. 190, 222-24 (1943) (upholding Commission action predicated upon principle that Commission "should administer its regulatory powers in light of the purposes which the Sherman Act was designed to achieve").[17]

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[17] In considering antitrust *policies* as part of its public interest analysis, the Commission need not determine whether any LECs have actually violated the antitrust laws. Rather, the Commission should (continued...)